

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DAVID CATHEY,
Plaintiff

V

VSC OPERATIONS, LLC,
Defendant

Case No.: 4:21-cv-00264 ALM

Hon. Judge Amos L. Mazzant

JOINT RULE 26(f) REPORT

1. Brief statement of the claims:

Plaintiff alleges violations of the Telephone Consumer Protection Act (TCPA) and the (TBCC) by Defendant making repeated harassing calls to Plaintiff's cellular telephone attempting to sell an automobile warranty, starting in January of 2020. Defendant never obtained express consent from Plaintiff prior to making the unsolicited calls. Plaintiff never provided his cellular telephone number to Defendant and even went as far as to register the cellular telephone number on the national do not call registry on December 2, 2014. Plaintiff therefore seeks all actual damages and statutory damages pursuant to 47 U.S.C. §227(b)(3)(A), §227(b)(3)(B), §227(C), §227(b)(3) and (c) and statutory damages as provided under §302.302(a) of the Texas Business & Commerce Code.

Defendant contends that Plaintiff's claims under the TCPA are improper inasmuch as Plaintiff is believed to have used an alias ("Russ Bixby", "Russel Bixby", and/or "Russell Bixby") on October 15, 2019, to provide his prior express written consent through the statesideautowarranty.com site to receive telephone calls from Defendant. Through its asserted counterclaims, Defendant seeks a declaratory judgment that it has not violated the TCPA in view of Plaintiff's provision of prior express written consent. Further, Defendant has asserted an additional counterclaim for common law fraud and fraud in the inducement against Plaintiff, based upon his use of an alias and misrepresentation of his interest in Defendant's services for the purpose of bringing this lawsuit.

2. The jurisdictional basis for the suit:

Jurisdiction of this court arises pursuant to 28 U.S.C. § 1331, which grants this court original jurisdiction of all civil actions arising under the laws of the United States and 28 U.S.C. §§ 1367(a), 2201, and 2202.

3. List of names of the parties:

Plaintiff: David Cathey

Plaintiff's Counsel: Amy L. B. Ginsburg and Jacob U. Ginsburg of Kimmel & Silverman, P.C.

Defendant: VSC Operations, LLC

Defendant's Counsel: Sarah de Diego and Sarah R. Frankfort of De Diego Law LLC

4. Related cases and potential for consolidation:

None.

5. Initial Disclosures have been completed. Plaintiff served his initial disclosures on Wednesday, July 7, 2021. Defendant served its initial disclosures on Monday, July 12, 2021.

6. Proposed scheduling order deadlines. **(Please see attached Appendix 1)**

Deadline for Dispositive Motions – **November 8, 2021**

7. Describe in accordance with Rule 26(f):

(i) Subjects that discovery is needed on:

Discovery is needed relating to Plaintiff's claims, Plaintiff's damages, Defendant's defenses and counterclaims, and Defendant's practices.

Discovery Deadline -completed by **January 17, 2022**

Discovery should not be conducted in phases and the parties do not propose any changes to the limitations on discovery.

(ii) Any issues relating to ESI:

There are no issues concerning the production of ESI. All ESI will be produced by the parties subject to the necessary and proper objections.

(iii) Any agreements or disputes relating to privilege:

The parties do not anticipate any issues at this time, but reserve the right to address such issues with the Court should they arise.

- (iv) Any proposed changes to Discovery Limitations:

The parties do not propose any changes or limitations on Discovery.

- (v) Whether any orders should be entered pursuant to Rule 26 (c) or 16(b),(c):

None at this time.

8. Status of Settlement:

Plaintiff's update: The parties believe that settlement may be possible and counsel will continue to discuss resolution of this matter. The parties have not discussed or agreed upon a mediator at this time. Plaintiff believe they he will be able to discuss mediation once discovery has closed.

Defendant's update: To date, Plaintiff has not made any demand. Defendant has broached settlement multiple times, including by making offers of settlement on May 14, 2021 and June 22, 2021. Defendant did not receive a response to either offer of settlement previously made. Despite Defendant's settlement efforts, there are no ongoing settlement negotiations between the Parties. During the Rule 26(f) conference between the Parties held on July 1, Jacob Ginsburg, counsel for Plaintiff, stated that he would discuss settlement with his client. However, Defendant has not received any response regarding the outcome of any such discussions. Defendant does not wish to wait until the close of discovery to attend mediation, and believes that a good faith attempt at settlement and mediation should occur at the outset of this case. Therefore, Defendant proposes that mediation occur by September 13, 2021, as noted on the attached proposed Scheduling Order.

9. The identity of persons expected to be deposed:

Plaintiff: Plaintiff anticipates taking the deposition of Defendant's 30(b)(6) representative and any employees or representatives identified in Defendant's Rule 26(a) disclosures.

Defendant: Defendant anticipates taking the deposition of Plaintiff.

10. A proposed pretrial date, trial date, estimated number of days for trial and whether a jury has been demanded:

Proposed pretrial date **June 30, 2022**

Proposed trial date in **TBD**

Parties anticipate **2-3 days** for trial.

The Parties have made a timely demand for a trial by jury.

11. Names of the attorneys who will appear on behalf of the parties:

Plaintiff: Amy L. B. Ginsburg, Esq., Kimmel & Silverman, PC, 30 E. Butler Ave,
Ambler, PA, 19002 Phone: (215) 540-8888

Defendant: Sarah de Diego, Esq., De Diego Law, LLC, 1607 Ave Ponce de Leon,
GM06, San Juan, PR 00909 Phone: (310) 980-8116

12. The Parties consents to trial before a Magistrate Judge.

13. Any Other Matters:

None at this time.

/s/ Amy L. B. Ginsburg
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